Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1565

SOUTHERN OHIO COAL COMPANY AND
OHIO POWER COMPANY,

Petitioners,

— VS. —

UNITED MINE WORKERS OF AMERICA, UNITED MINE WORKERS OF AMERICA, District No. 6, AND UNITED MINE WORKERS OF AMERICA, LOCAL NOS. 1890, 1886 AND 1957,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Southern Ohio Coal Company and
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I. Questions Presented.

(A) Did the Sixth Circuit Court of Appeals in vacating the injunctions which had previously been issued by the district court properly delineate and apply the appropriate federal standards concerning the scope of injunctive relief permissible to enforce the arbitration provision of the collective bargaining agreement before it?

(B) Did the Sixth Circuit Court of Appeals properly apply the ordinary principles of agency in an action brought under 29 U.S.C. § 185 with regard to the liability

of a labor union, some members of which have engaged in a variety of unauthorized work stoppages?

(C) Did the Sixth Circuit Court of Appeals properly and consistently apply this Court's decision in *Buffalo Forge Company* v. *United Steelworkers of America*, 428 U.S. 397 (1976), under circumstances where various UMW members refused to cross the picket line established by stranger pickets who may have been members of the same International union and may have been governed by the same collective bargaining agreement?

II. Statement of the Case.

Respondents herein adopt petitioners' statement of the case concerning its procedural and factual history, with the following exceptions:

(A) Respondents object to the characterizations by petitioners of "the union's no-strike obligation." Respondents agree that there is an arbitration provision in the collective bargaining agreement in force between the parties. The agreement does not contain a no-strike provision. It is the question of the extent to which that arbitration provision creates an obligation on the part of the union not to strike which forms the basis for much of the controversy involved in this, and related actions.

(B) Respondents object to petitioners' statement concerning the District Court's findings in its Order of September 9, 1975 (Appendix. pp. 15a-23a). Specifically, petitioners' statement that "the District Court found that . . . the strikes were over arbitrable issues and, thus, in violation of the union's implied no-strike agreement" is inaccurate for two reasons: (1) the District Court did not characterize the arbitration provision as an "implied no-strike agreement," and, (2) the District Court specifically found that the members of the local unions were justified in refusing to cross picket lines composed of masked pickets and in refusing to work for a total of three days following the shooting of a union member by a masked picket. There was no finding by the District Court that the stoppages occasioned by masked pickets and violence in any way constituted arbitrable issues.

(C) Respondents object to petitioners' description of the picketers demonstrating at the three subject mines in July of 1976 as being United Mine Workers' members. There is no evidence in the record which accurately identifies the stranger pickets as members of the United Mine Workers of America. Rather, for purposes of its ruling, the Sixth Circuit simply assumed that the picketers were a "roving band" of mine workers.

(D) Respondents object to petitioners' characterization of the Sixth Circuit's decision as failing to apply certain accepted principles of federal labor law. Petitioners' statements herein concerning the basis for the Sixth Circuit's decision should more properly be contained in the argument portion of their brief. Specifically, however, respondents object to petitioners' statements that the Sixth Circuit "reject[ed] the application of certain agency principles as required by 29 U.S.C. § 185," and that it "rejected the conclusion of the Seventh Circuit" in *Old Ben Corp.* v. *Local No. 1487, United Mine Workers*, 500 F.2d 950 (7th Cir. 1974), concerning a past pattern and practice of striking over arbitrable issues and its underlying rationale.

(E) Finally, respondents object to petitioners' statement that pickets at the subject mines in July of 1976 were seeking support of a strike "in violation of the mandatory arbitration provisions of the same collective bargaining agreement" which governs respondents. There is no evidence in the record detailing the full scope and nature of all the disputes which had occasioned the widespread picketing or establishing that any of these disputes violated the arbitration provisions of this or any other collective bargaining agreement.

III. Reasons for Denying the Writ of Certiorari.

The decision of the United States Court of Appeals for the Sixth Circuit should not be reviewed because:

(A) It properly applies decisions of this Court and other courts of appeals concerning the scope of injunctive relief permissible to enforce the arbitration provisions of a collective bargaining agreement so as to avoid unnecessary involvement by federal courts in the private agreements of the parties.

(B) It is entirely consistent with decisions of this Court concerning the application of ordinary principles of agency in actions brought under 29 U.S.C. § 185 with regard to the liability of a union for the actions of some of its members.

(C) It properly applies this Court's recent decision in *Buffalo Forge Company* v. *United Steelworkers of America, supra,* in the context of a sympathy strike, as have other courts which have had the benefit of the *Buffalo Forge* decision.

The Sixth Circuit established no new precedents in its decision, but rather reiterated basic principles of federal labor policy which have been enunciated by this Court and followed by a variety of circuit courts of appeals. Therefore, there is a decided absence of special and important reasons for this Court to review the case and petitioners' request for a Writ of Certiorari should be denied.

A. The Sixth Circuit's Decision Is Entirely Consistent With Decisions of This Court Concerning the Extent to Which Injunctive Relief Is Appropriate to Enforce Arbitration Provisions of a Collective Bargaining Agreement, and the Permissible Scope of Such Relief.

Petitioners' argument that the Sixth Circuit's decision unduly restricts the scope of remedial injunctive relief in the context of a collective bargaining agreement ignores the indisputable breadth and vagueness of the preliminary injunctions which the Sixth Circuit vacated. These injunctive orders by their terms purported to forbid *any further work stoppages whatever* for the entire life of the agreement. To argue that these particular orders fall within the *narrow* exceptions to the anti-injunction provisions of the Norris-LaGuardia Act described in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970), as further limited by *Buffalo Forge Co.* v. *United Steelworkers of America, supra,* is to ask this Court to ignore all of the previous limitations which it has established concerning the propriety and advisability of granting injunctive relief to enforce the arbitration provisions of a collective bargaining agreement.

Petitioners argue at length that reversal of the Sixth Circuit's decision will "protect private interests" and "vindicate the public good by avoiding labor strife." It is un-

clear how the granting of an injunction so broad as to encompass matters which respondents have not agreed to submit to arbitration will serve to improve relations in the labor/management context and promote either private or public interests. Rather than concede the obvious defects of vagueness and overbreadth contained in these earlier orders, which were made glaringly apparent by this Court's decision in *Buffalo Forge, supra,* petitioners have elected, by attempting to revive and enforce these orders, to aggravate an already troublesome situation, and to exacerbate labor relations between the parties which already should appropriately be characterized as "strained." Such a legal stance can hardly be construed as one "promoting industrial peace."

This Court in *Buffalo Forge* reaffirmed and reemphasized that the *Boys Markets* rationale, wherein a limited exception to the Norris-LaGuardia Act's ban on federal court injunctions in labor disputes was carved out, was indeed a "narrow one." In doing so, this Court cited with approval the statement from *Sinclair Refining Company* v. *Atkinson,* 370 U.S. 195, 225 (1962), that "there is no federal anti-strike policy." Subsequently, the Sixth Circuit in its decision herein accepted and applied this Court's teachings in *Buffalo Forge,* observing that *Buffalo Forge* further narrowed the permissible scope of injunctive relief first recognized in *Boys Markets.* The Court recognized that under the facts before it, a work stoppage caused by a local union's refusal to cross a picket line established by another local union does not constitute a dispute which the parties have agreed to submit to arbitration. The Sixth Circuit's recognition and application of the principles of *Boys Markets* and *Buffalo Forge* was persuasively stated in the following manner:

> . . . It is only when an injunction is required to vindicate the contractual arbitration process that the anti-injunction policy of the Norris-LaGuardia Act will be accommodated to satisfy the public policy favoring peaceful settlement of labor disputes through arbitration. *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. at 253. *The key to issuance of a Boys Markets injunction is a finding that the issue underlying the work stoppage is arbitrable.* In this case, however, the District Court found that there was "no arbitrable grievance underlying the work stoppage," but rather the work stoppage resulted from the miners' reluctance to cross the stranger picket lines. *Thus, as in Buffalo Forge, whether motivated by sympathy or fear of reprisal, the work stoppage was not caused by an arbitrable dispute between the mine workers and the employer.* The strike had "neither the purpose or the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain." . . . (Emphasis added)

Appendix, p. 39a.

Clearly, therefore, the injunctive orders vacated by the Sixth Circuit purporting to enjoin any work stoppage, including one due to the presence of stranger pickets, were impermissibly overbroad. As noted by the Court in its decision, "the absence of an express no-strike clause in the contract is fatal to the company's claim of arbitrability," and therefore "the issue of the union's right to refuse to cross a picket line is not even arguably arbitrable." Appendix, pp. 40a-41a.

Contrary to petitioners' assertion, nothing in the Sixth Circuit's decision indicates that it will not issue a prospective injunction when a union has exhibited a propensity to

strike over arbitrable disputes. Rather, the court reviewed precedent from other circuits, and incorporated the most persuasive arguments from each in fashioning a decision consistent with both *Boys Markets* and *Buffalo Forge*. While there is undeniably a divergence of opinion as to the question of when a prospective injunction may issue, respondents believe that the Sixth Circuit has struck a proper balance which carefully reflects this Court's controlling guidelines.

The court explained its reasoning as follows:

> . . . In summary, the circuit precedents on the permissible breadth of injunctive relief in § 301 actions are far from uniform. The Tenth, Ninth and Third Circuits would appear to sanction prospective injunctive relief against specifically identified contractual violations which have occurred in the past and are likely to recur in the future. The Seventh Circuit would permit an injunction as broad as a contractual arbitration clause, and the Fifth Circuit would seem to bar any injunctive relief against future strikes.
>
> We prefer to take an intermediate position. We see nothing in *Boys Markets* that is inconsistent with a grant of prospective injunctive relief in the exercise of § 301 jurisdiction . . .
>
> • • •
>
> . . . Once a court has found that a union is engaged in a continuing practice of striking over arbitrable disputes and the *Boys Markets* guidelines are satisfied, we believe that the ensuing injunction may be extended to encompass future strikes over disputes similar to those which caused strikes in the past.

Appendix, pp. 48a, 50a.

In so applying *Boys Markets*, the Court also shunned the "indiscriminate issuance of blanket injunctions by overzealous courts" which could, in the Court's words, "signal a return to the pre-Norris-LaGuardia era of ad hoc sweeping anti-strike decrees." Appendix, p. 50a. It is such a blanket injunction which the Sixth Circuit vacated and which petitioners herein seek to resurrect, contrary to the express principles of *Boys Markets*.

Further, the Sixth Circuit recognized that the granting of overly broad, blanket injunctions unduly involves federal courts in what is a labor/management problem, and promotes neither arbitration nor industrial peace:

> We note however, that a court called on to supervise a blanket injunction runs a grave risk of becoming ensnarled in the private relationship of the parties and substituting its interpretation of the collective bargaining agreement for that of the arbitrator. An overbroad injunction presents the same risk of *excessive judicial entanglement* that led the Supreme Court in *Buffalo Forge* to reject the argument that the arbitrability of the scope of the no-strike clause was itself sufficient basis for a *Boys Markets* injunction. . . . An overbroad injunction inhibits the exercise of important employee rights and *induces the employer to resort to the courts for contempt proceedings* rather than to submit disputes to arbitration. *Thus, an overbroad injunction sacrifices the national policy of avoiding interference in the private economic affairs of the parties without furthering the cause of arbitration.* (Emphasis added)

Appendix, pp. 50a-51a.

The Sixth Circuit recognized that the injunctions which it vacated amounted to nothing less than court orders for all miners to report to work daily during the life of the agreement. The orders ignored rights which respondents had not given up through the collective bargaining agreement and were impermissibly overbroad under the tests of both *Boys Markets* and *Buffalo Forge*. Affirmance of the District Court's order would improperly expand the scope of remedial injunctive relief in such a fashion as to foster strife and additional litigation, along with inappropriate resort to the federal courts' contempt powers by management.

The Sixth Circuit's careful application of this Court's previous decisions indicates that there is no persuasive, special or important reasons for reviewing its decision.

B. The Sixth Circuit's Decision Is Entirely Consistent With the Decisions of This Court Concerning the Application of Ordinary Agency Principles to a Labor Union in Actions Brought Under 29 U.S.C. § 185.

Petitioners' assertion that the Sixth Circuit "excluded" the application of ordinary agency principles pertinent to this action contrary to this Court's decision in *United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966), is not well taken. This Court recognized in *Gibbs* that in actions brought under the Labor Management Relations Act, such as the present one, a union's responsibility for the acts of its members and officers is to be measured by ordinary doctrines of agency. These basic principles require evidence that the union has authorized, participated in, encouraged, ratified or condoned unlawful activity before liability will attach. It is these basic principles which the District

Court and the Sixth Circuit applied, and accordingly, there is no compelling reason for this Court to review the Sixth Circuit's decision in this regard.

The District Court and the Sixth Circuit properly recognized that the mere fact that the District and the International unions had received notice of the stoppages was not sufficient evidence to justify extending injunctive relief against those parties. Neither District 6 nor the International had instigated or provoked the stoppages. Appendix, p. 33a. The Sixth Circuit properly held that "a union may only be held responsible for the authorized or ratified actions of its officers and agents," recognizing at the same time that a union's "studied ambivalence" to unauthorized stoppages may in certain circumstances constitute sufficient inducement, encouragement and condonation to expose the union to liability. Appendix, p. 34a.

The Court further remarked that in most instances encouragement or ratification of unauthorized stoppages occurs in circumstances in which the union is attempting "to bring pressure to bear on the employer and reap the benefits of the illegal work stoppage." Appendix, p. 34a. There is simply no suggestion in the record of any improper motivation on the part of either the District or the International related to the work stoppages. In the absence of such evidence, there is no legal basis, under the ordinary principles of agency law, for holding either the District or the International responsible for these unauthorized stoppages.

Respondents recognize that certain circuit court decisions cited by petitioners do appear to favor a liberal "mass action" or "best efforts" approach concerning a un-

ion's liability for unauthorized stoppages. However, the majority of these cases contain an express finding by the court that the union ultimately found liable had at least implicitly encouraged or condoned the unlawful activity.

For example, in *Wagner Electric Corp.* v. *Local 1104, International Union of Electrical, Radio and Machine Workers,* 496 F.2d 954 (8th Cir. 1974), the Court observed that where liability is based upon principles of agency pursuant to 29 U.S.C. § 185(e), the determination of authorization and ratification is largely a question of fact based upon the credibility of the witnesses and the weight of the evidence. The Court found that the union was responsible for the strike for a variety of reasons, including suspect circumstances surrounding union meetings, actual involvement of union officers in initiating the strike, participation by all 2,700 members in the strike, and extremely token efforts taken by union officers toward attempting to end the strike. Clearly, there is no similar evidence in the matter before the Court concerning involvement in the stoppage, or lack thereof, by officers and representatives of District 6 and the UMWA International.

Similarly, in *Vulcan Materials Co.* v. *United Steelworkers of America,* 430 F.2d 446 (5th Cir. 1970), *cert. denied,* 401 U.S. 963 (1971), the Court found that agents and representatives of the unions were directly involved in engaging in or inducing illegal activity, and by reason of their direct participation in the strike, the unions were found to have acquiesced in and condoned the illegal strike. In fact, the District Court found that the strike was actually *conducted* by both the Local and the International unions as a "joint venture." No such finding was made by the District Court

in the present matter, nor would such a finding be proper under the evidence produced at the injunctive hearing.

Finally, the court's decision in *Eazor Express, Inc.* v. *International Brotherhood of Teamsters,* 520 F.2d 951 (3rd Cir. 1975), *cert. denied* 424 U.S. 935 (1976), requiring a union to use *all reasonable means* available to it to end an unauthorized strike, imposes a harsh, unwarranted and impossible standard for determining liability of large national unions which in reality have little or no power to control the day-to-day activities of their members at the local level. Further, it would compel respondents to undertake duties not specifically imposed by the agreement. *Eazor Express,* which involved an *express* no-strike provision, fails to recognize the practical problems imposed upon the International Union in disciplining its own members under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401, et seq. (see, e.g., *Monborne* v. *United Mine Workers of America,* 353 F. Supp. 255 (WD Pa. 1973)), and is not widely followed throughout the various circuit courts.

The Sixth Circuit properly applied the pertinent principles of agency to the facts before it, consistent with this Court's previous decisions regarding a union's liability for acts of its agents and representatives. The fact that some distinctions appear to exist in other circuit courts concerning the application of these principles does not require this Court to review the Sixth Circuit's proper interpretation of the law of agency in the present matter.

C. The Sixth Circuit's Decision Properly and Consistently Applied the Decision of This Court in *Buffalo Forge Co.* v. *United Steelworkers of America* to the Circumstances of the Case.

Petitioners' objection to the Sixth Circuit's "mechanistic" application of this Court's decision in *Buffalo Forge, supra,* is simply without legal or logical justification. The Sixth Circuit interpreted and applied the rationale of *Buffalo Forge* in a manner wholly consistent with this Court's decision and in much the same fashion as have other courts which have subsequently had the opportunity to review and apply *Buffalo Forge.*

Petitioners suggest in their brief that two basic factual differences between the case now before the Court and *Buffalo Forge* require a different legal standard to be applied, namely, (1) the primary strike here was arguably not a "legal" economic strike and (2) the picketers involved in the primary strike were governed by the same collective bargaining agreement which controls the employees who refused to cross the picket lines. The Sixth Circuit quite properly rejected the argument that these factual variations are distinctions with no legal import whatever, and petitioners' resurrection of this contention in their brief does not provide this Court with any justification for reviewing the decision of the Sixth Circuit.

The Sixth Circuit correctly noted that the legality or illegality of the primary picketing in a sympathy strike situation is not a valid basis for differentiating between actions which are protected by *Buffalo Forge* and those which are not. The Court recognized that such a distinction would improperly direct the Court's attention toward the primary picketers and away from the parties sought to be enjoined:

> The glaring defect in this argument is that it improperly shifts the focus of the court's inquiry from the employees against whom the injunction is sought to the illegal pickets. Not only does this raise problems of proof because the initial strikers will often not be parties to the action, but it also places the burden of making complex judgments as to the legality of the primary line on the employees faced with the decision whether or not to cross. If they refuse to cross, they run the risk of injunction, damages and civil contempt. Both *Boys Markets* and *Buffalo Forge* teach quite explicitly that the proper focus of judicial attention in a § 301(a) injunctive action should be on the employees sought to be enjoined. . . . The legality of the primary picketing is irrelevant.

Appendix, pp. 38a-40a.

Further, even if the record established, which it does not, that the primary picketers were members of the United Mine Workers of America engaging in an illegal strike, the local union's actions in refusing to cross the picket lines clearly do not constitute ratification of the strike or adoption of the goals of the picketers as their own. The additional argument that since respondents herein are governed by the same collective bargaining agreement which may control the primary picketers, they must receive a tangible benefit by honoring their picket lines, is simply without factual justification. The Sixth Circuit rejected these contentions of petitioners in the following manner:

> Thus, the employer reasons, the membership of the local unions stands to benefit from resolution of the

> primary strike favorable to the mineworkers. Just why this is so the Company does not elaborate. . . . The Bituminous Coal Wage Agreement provides that local disputes be grieved and arbitrated on a mine-by-mine basis. The only benefit to be derived by the local unions from favorable settlement of the West Virginia strike is indirect, at best, and highly speculative. Accordingly, the bare assertion that all mine workers are members of the same bargaining unit and working under a national contract adds little to the central inquiry in *Boys Markets* cases—whether the employees sought to be enjoined are striking over issues which they have agreed to arbitrate.

Appendix, pp. 37a-38a.

The petitioners' assertion that application of the principles of *Buffalo Forge* to a "substantively different factual and legal setting" somehow erodes the arbitration process agreed upon in the collective bargaining agreement ignores the controlling fact that the right to engage in a sympathy strike or honor a stranger picket line is not a matter which petitioners' employees have agreed to submit to arbitration. Under the circumstances of this case, there simply is no grievable dispute which the parties are contractually bound to arbitrate. As was recognized by the Sixth Circuit in its decision, all nine justices of this Court in *Buffalo Forge* agreed that an implied no-strike agreement does not extend to sympathy strikes.

In *Buffalo Forge*, this Court stated that the question of the right to engage in a sympathy strike under the contract before it was arguably subject to the arbitration provisions of the contract in view of the *express* no-strike

clause contained therein. This same question was not before the Sixth Circuit, since the 1974 Wage Agreement contains at most a limited and *implied* no-strike obligation. Appendix, p. 40a. *Gateway Coal Company* v. *United Mine Workers of America*, 414 U.S. 368 (1974). Thus, the right of respondents to engage in work stoppages due to the presence of stranger pickets is not even *arguably* subject to the arbitration provisions of the 1974 Wage Agreement.

Accordingly, the additional teaching of *Buffalo Forge*, that a court cannot issue a *Boys Markets* injunction unless the subject matter of the dispute between the union and the employer is *clearly arbitrable*, or unless it has been found to be arbitrable by an arbitrator, also support the Sixth Circuit's decision. In the absence of an arbitrable grievance underlying the work stoppage, there is simply no grievable dispute to be arbitrated. Therefore, there can be no improper circumvention of the arbitration provisions of the contract.

The Sixth Circuit is not alone in interpreting and applying the teachings of *Buffalo Forge* in the manner in which it did. For example, in *U.S. Steel Corp.* v. *United Mine Workers of America*, 418 F. Supp. 172 (WD Pa. 1976), U.S. Steel sought injunctive relief against one of its United Mine Workers locals. The District Court relied upon this Court's decision in *Buffalo Forge* to support its denial of injunctive relief:

> . . . Nor do we believe that *Buffalo Forge* is distinguishable because the primary dispute in that case precipitated a legal strike while the one in West Virginia appears, from our limited knowledge of it, to be illegal. These differences are immaterial because the primary thrust of *Buffalo Forge* lies in the fact

> that the cause of the secondary work stoppage was not amenable to the arbitration provisions of the relevant labor contract (and one, incidentally, that contained an express no-strike clause). Since *Buffalo Forge* squarely addressed the question of whether a federal court may enjoin the sympathy strike—and answered it negatively—Local 6321's decision not to work cannot be disturbed by a district court injunction, if such strike is carried out in support of their union brethren.

418 F. Supp. at 174-175.

Similarly, in *U.S. Steel Corp.* v. *United Mine Workers*, 548 F.2d 67 (3rd Cir. 1976), the Court rejected many of the arguments put forth by petitioners herein concerning the legality of a primary strike which eventually forced U.S. Steel's Robena Mine to close down in deference to stranger pickets:

> U.S. Steel contends that the Robena work stoppage was in fact "over" an arbitrable dispute. . . . U.S. Steel thus attempts to distinguish this case from *Buffalo Forge* on the ground that the Humphrey strike, which triggered the Robena work stoppage, was an illegal work stoppage over disputes subject to arbitration, whereas the primary dispute in *Buffalo Forge* was concededly legal.
>
> . . . We think it sufficient to dispose of U.S. Steel's contention by observing that the Robena strike was not over any dispute "between the union and the employer"—between UMW and U.S. Steel—that was subject to arbitration.

548 F.2d at 73-74.

Clearly, the Sixth Circuit has joined other courts in interpreting and applying *Buffalo Forge* in a manner wholly consistent with this Court's decision. The variety of factual settings present in these cases fit comfortably within the standards which this Court has pronounced concerning the circumstances in which a sympathy strike can be enjoined. In the present instance, respondents have not contractually obligated themselves to forego their right to engage in a sympathy strike, and accordingly the Sixth Circuit's decision on this issue is in complete accord with *Buffalo Forge*.

IV. Conclusion.

The Sixth Circuit's decision in this case consistently applies principles which have been enunciated in numerous decisions of this Court regarding the scope of injunctive relief permissible to enforce the arbitration provisions of a collective bargaining agreement, the standards for adjudging union accountability for the actions of its members, and the propriety of injunctive relief under the circumstances of a sympathy strike. This decision represents a uniform and well-reasoned application of widely recognized federal labor policy as enunciated by this Court and the various circuit courts of appeals which have interpreted and followed this Court's guidelines. The issues contained herein are neither novel nor previously undecided, and are critical to the petitioners herein only in the sense that they have been determined adversely to their interests, in strict accordance with this Court's previous dictates. It is respectfully submitted that this case contains no special

and important issues which would make it appropriate for review and consideration by this Court, and that therefore, the Writ of Certiorari should be denied.

Respectfully submitted,

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